IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-10-2015

(Judgment Reserved on 10-09-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.434 of 2014

M.Venkatesulu,
Sole Proprietor of MSN Mango Supplier,
S/o M.Subba Naidu,
7/353, Rama Naidu Colony,
Nagari, Chittoor District,
Andhra Pradesh-517 590. .. Plaintiff

Vs.

M/s.Kanderi Fruit Pack Pvt. Ltd.,
Rep. by its Managing Director Madan Mohan.K.,
F-1, AGP Sivaniyam,
W-811 Syndicate Bank Colony,
9th Street, Anna Nagar West Extension,
Chennai-600 101. .. Defendant

Plaint filed and numbered as Civil Suit, under Order 7 Rule 1 of the Code of Civil Procedure, read with Order 4 Rule 1 of the Madras High Court Original Side Rules, praying for judgment and decree, to direct the defendant to pay a sum of Rs.61,74,962/- together with interest and costs of the suit.



For plaintiff : Mr.V.Prakash, Senior Counsel for Ms.Shuhharanjani Ananth

For defendants : Set ex-parte on 25.03.2015

JUDGMENT

The suit is filed by the plaintiff for recovery of

Rs.61,74,962/- together with interest, from the defendant.

2. The plaintiff is a farmer cultivating mangoes in Chittoor District of Andhra Pradesh and the defendant is an export company with fruit/pulp extracting unit. The plaintiff supplies mangoes and fruits cultivated to the defendant. The defendant owed the plaintiff Rs.2 lakhs on supply of mangoes. During March 2011, the defendant approached the plaintiff for heavy loan of Rs.20 lakhs and informed the plaintiff that the previous outstanding would be cleared if the further loan of Rs.20 lakhs is advanced to the defendant-Company. Since the plaintiff is a poor farmer, he could not mobilise such huge amount and the defendant requested for arranging agricultural farm loan with Bank. The defendant assured the plaintiff that they would offer a Corporate Guarantee towards availing of such a loan . Accordingly, as instructed by the defendant, the plaintiff approached Bank of Baroda, International Business Branch at Moore Street, Chennai and sought for a farm loan for Rs.20 lakhs, which was also sanctioned by the said Bank on 16.03.2011. The entire scheme of the loan is that the defendant stood as a Corporate Guarantor. The plaintiff executed documents and the defendant was authorised remit the instalment and interest due to the Bank from and out of

the sale proceeds. On receipt of the loan amount, the plaintiff transferred by RTGS a sum of Rs.18 lakhs to the defendant on 22.03.2011, after deducting Rs.2 lakhs payable by the defendant to the plaintiff. The defendant executed a tri-partite agreement with the plaintiff and 17 other similar farmers and the Bank for the loan and for the hypothecation of the receivables. No repayment whatsoever was made by the defendant in respect of the said loan instalment.

3. While that be so, the plaintiff received legal notice from the Bank of Baroda, on 06.11.2012, calling upon him and the defendant as borrower and guarantor respectively, to pay the Bank Rs.21,08,290/- as on 15.07.2012 together with interest @ 16.25% per annum with monthly rest within ten days from the date of such notice. As per the said legal notice from the Bank's Lawyer, the account of the plaintiff was classified as non-performing on 28.02.2012.

4. Apart from the loan amount, the defendant failed to make payment of Rs.43,35,300/- to the plaintiff towards the supply of mangoes during 2009 and 2012. The defendant issued cheque for Rs.37,99,350/- as security for payment with the promise that they will fully discharge the

liability within ten days and take back the cheque. Since the defendant failed in their promise and the said cheque, when presented in Bank on 17.02.2014, returned unpaid on 19.02.2014 for the reason "payment stopped by drawer", the plaintiff issued legal notice to the defendant, as offences under Section 138 of the Negotiable Instruments Act and Section 420 IPC were made out and a statutory notice for winding up under Section 433 of the Companies Act was also issued to the defendant-Company.

5. As on 01.03.2014, the defendant owed the plaintiff Rs.23,75,612/- towards the outstanding in respect of the loan account, together with interest till realisation. The defendant-Company replied on 10.03.2014, admitting the liability to pay the plaintiff Rs.37,99,350/-. The defendant did not pay the amounts. Hence, the plaintiff has filed this suit for recovery of Rs.61,74,962/- together with interest and also for costs.

6. The defendant had been served with Court notice on 05.09.2014 and the defendant was set ex-parte by this Court on 25.03.2015.

7. On the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Exs.P-1 to P-9.

8. It is seen that the defendant-Company, with Ex.P-3

letter addressed to the plaintiff, enclosed cheque for Rs.37,99,350/- as security towards the payment of the fruits supplied and requested the plaintiff to not to present the cheque for collection and the defendant-Company assured in Ex.P-3 letter that they will make the payment and take back the said cheque. Thus, it is proved by the plaintiff that the cheque was issued by the defendant-Company, which is liable to pay the cheque amount to the plaintiff.

9. It is to be noted from Ex.P-4 that Bank of Baroda, International Business Branch, Moore Street, Chennai-600 001, filed Original Application No.100 of 2013 under Section 19 of the Recovery of Debts Due to the Banks and Financial Institutions Act, against both the plaintiff herein and the defendant herein, before the Debts Recovery Tribunal-2, Chennai, for recovery of Rs.23,75,612/- with interest @ 14.5 per annum with monthly rest in respect of the Demand Loan and with penal interest @ 2% per annum from the date of the said Original Application till the date of realisation.

10. In the proof affidavit filed in the suit before this Court, the plaintiff did not state that the entire amount mentioned in the said O.A.No.100 of 2013 before the

DRT, is paid by the plaintiff to the Bank of Baroda. However, both the plaintiff and the defendant are jointly and severally liable to pay the amount to the said Bank, if the said O.A. is decreed by the DRT, after contest.

11. Since the plaintiff has not paid the amount due to the Bank of Baroda, he is not entitled for the decree as prayed for in this suit in respect of the said Rs.23,75,612/- being the amount due as per the said O.A. filed before the DRT. Since no amount was paid by either party (i.e. the plaintiff as borrower or the defendant as guarantor), the Bank instituted the said O.A. The plaintiff is at liberty to recover the amount from the defendant, subject to the result of the said O.A., which, as stated by the learned Senior Counsel appearing for the plaintiff, is pending before the DRT as on today. Hence, it has to be concluded that the plaintiff has no cause of action to recover Rs.23,75,612/- in this suit, which amount is admittedly pending adjudication before the DRT in the said O.A. filed by the Bank of Baroda, as it is premature to decree this suit in respect of the said amount of Rs.23,75,612/- in favour of the plaintiff.

12. Resultantly, in the present suit, the plaintiff is only entitled for decree in respect of the cheque amount of

Rs.37,99,350/- from the defendant.

13. From the evidence of P.W.1 and Exs.P-1 to P-9, it is clear that the plaintiff has proved that the defendant is liable to pay the amount due to the plaintiff only for Rs.37,99,350/- in the present suit.

14. Accordingly, the suit is decreed ex-parte, to the extent of Rs.37,99,350/- as against the defendant. The defendant shall pay the plaintiff the said sum of Rs.37,99,350/- (Rupees thirty seven lakhs, ninety nine thousand, three hundred and fifty only) together with interest at the rate of 12% per annum from the date of plaint, till the date of realisation, with proportionate costs.

15. Subject to the outcome of O.A.No.100 of 2013 pending before the DRT-2, Chennai, the plaintiff is at liberty to institute a separate suit in accordance with law, before appropriate Court/forum, if he is so advised, for recovery of Rs.23,75,612/- from the defendant.

<u>Witnesses examined on the side of plaintiff:</u>

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|---|---|
| P.W.1 | Mr.M.Venkatesulu (plaintiff) |

<u>List of documents marked on the side of plaintiff:</u>

| *Exhibit No.* | *Dated* | *Description* |
|---|---|---|
| P-1 | 21.04.2015 | Statement of account of the plaintiff in the Bank of Baroda, Puttur Branch, for the period from 02.06.2009 to 31.03.2015. |
| P-2 | 06.11.2012 | Lawyer's Notice addressed to the plaintiff and the defendant by the Counsel for the Bank of Baroda. |
| P-3 | -- | Letter addressed by the defendant to the plaintiff |
| P-4 | --- | Photocopy of Original Application No.100 of 2013 filed by the Bank of Baroda before the DRT-2, Chennai. |
| P-5 | 13.01.2014 | Certified copy of the notice sent by the plaintiff's Lawyer to the defendant, along with the acknowledgment for having sent the same and received by the defendant. |
| P-6 | 17.02.2014 | Certified copy of the cheque dated 17.02.2014 for Rs.37,99,350/- drawn on Bank of India, Puttur Branch, Andhra Pradesh, with the cheque return endorsement, dated 19.02.2014 by the Central Bank of India, Broadway, as "Payment stopped by drawer". |
| P-7 | 21.01.2014 | Certified copy of the reply sent by the defendant to the plaintiff's Advocate |

| *Exhibit No.* | *Dated* | *Description* |
|---|---|---|
| P-8 | 28.02.2014 | Certified copy of the statutory notice sent by the plaintiff's counsel to the defendant for the dishonour of cheque |
| P-9 | 10.03.2014 | Certified copy of the reply addressed by the defendant's counsel to the plaintiff's counsel and the plaintiff |

Witnesses examined on the side of defendant: Nil

List of documents marked on the side of defendant: Nil

List of Court documents marked: Nil

sd/.G.C.J

27.10.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/17.02.2016 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.